

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

KATHRYN L. JAGOW, DDS, individually and
on behalf of all others similarly situated,

Plaintiff.

No.

COMPLAINT—CLASS ACTION

JURY DEMAND

**ASPEN AMERICAN INSURANCE
COMPANY,**

Defendant.

I. INTRODUCTION

Plaintiff, KATHRYN L. JAGOW, DDS (“Jagow”), individually and on behalf of all other similarly situated members of the defined national class (the “Class Members”), by and through the undersigned attorneys, brings this class action against Aspen American Insurance Company (“Aspen” or “Defendant”) and alleges as follows based on personal knowledge and information and belief:

II. JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because at least one member of the proposed Class is a citizen of a state different from that of Defendant, the proposed Class has more than 100 class members,

COMPLAINT—CLASS ACTION - 1

KELLER ROHRBACK L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101-3052
TELEPHONE: (206) 623-1900
FACSIMILE: (206) 623-3384

and the aggregate amount in controversy exceeds \$5,000,000. The Court has supplemental jurisdiction over Plaintiffs' state law claims under 28 U.S.C. § 1337.

2. This Court has personal jurisdiction over Defendant because Defendant is registered to do business in Washington, has sufficient minimum contacts in Washington, and otherwise intentionally avails itself of the markets within Washington through its business activities, such that the exercise of jurisdiction by this Court is proper. Moreover, jurisdiction exists because the claims of Plaintiff arise out of and directly related to Defendant's contacts with Washington. Plaintiff has standing to bring each claim against Defendant as a class representative whose claims are typical and common of the class under Fed. R. Civ. P. 23.

3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(3) because the Court has personal jurisdiction over Defendant, a substantial portion the alleged wrongdoing occurred in this District and the state of Washington, and Defendant has sufficient contacts with this District and the state of Washington.

4. Venue is proper in the District of Washington pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims at issue in this Complaint arose in this District. Plaintiff's place of business is located in Mountlake Terrace, Snohomish County, Washington. This action is therefore appropriately filed in the Seattle Division of the United States District Court for the Western District of Washington.

III. PARTIES

5. Plaintiff KATHRYN L. JAGOW, DDS, owns and operates a dental practice located at 22905 56th Avenue West, #101, Mountlake Terrace, WA 98043.

1 6. Defendant Aspen American Insurance Company is an insurance carrier
2 incorporated and domiciled in the State of Texas, with its principal place of business in Rocky
3 Hill, Connecticut.

4 7. Aspen is authorized to write, sell, and issue business insurance policies in all 50
5 States, the District of Columbia, Puerto Rico and the U.S. Virgin Islands. Aspen conducted
6 business within these states by selling and issuing insurance policies to policyholders, including
7 Plaintiff Jagow.

9 **IV. NATURE OF THE CASE**

10 8. This lawsuit is filed to ensure that Plaintiff and other similarly-situated
11 policyholders receive the insurance benefits to which they are entitled and for which they paid.

12 9. Defendant Aspen issued one or more insurance policies to Plaintiff, including
13 Building, Blanket Dental Practice Personal Property and Income Coverage Part and related
14 endorsements, insuring Plaintiff's property and business practice and other coverages, with
15 effective dates of October 29, 2019 to October 29, 2020

16 10. Plaintiff's business property includes property owned and/or leased by Plaintiff
17 and used for general business purposes for the specific purpose of dentistry and other business
18 activities.

19 11. Defendant's policy issued to Plaintiff is an "all-risk" policy that provides broad
20 property and business interruption coverage except where excluded.

21 12. Defendant Aspen's insurance policy issued to Plaintiff promises to pay Plaintiff
22 for DIRECT PHYSICAL DAMAGE to covered property and includes coverage for risks of any
23 covered cause of loss to covered property.

1 13. Defendant Aspen's policy issued to Plaintiff includes Practice Income Coverage,
2 Extra Expense Coverage, Extended Practice Income Coverage and Civil Authority Coverage.

3 14. Plaintiff paid all premiums for the coverage when due.

4 15. On or about January 2020, the United States of America saw its first cases of
5 persons infected by COVID-19, which has been designated a worldwide pandemic.

6 16. On February 29, 2020, Washington Governor Jay Inslee issued Proclamation 20-
7 5, declaring a State of Emergency for all counties in the state of Washington as a result of Covid-
8 19. Thereafter, he issued a series of certain proclamations and orders affecting many persons and
9 businesses in Washington, whether infected with COVID-19 or not, requiring certain public
10 health precautions.

11 17. On March 19, 2020, Governor Inslee issued a "PROCLAMATION BY THE
12 GOVERNOR AMENDING PROCLAMATION 20-05: 20-24 Restrictions on Non Urgent
13 Medical Procedures." dated March 19, 2020, which prohibited dental practitioners from
14 providing dental services but for urgent and emergency procedures:

15 WHEREAS, the health care person protective equipment supply chain in
16 Washington State has been severely disrupted by the significant increased use of
17 such equipment worldwide, such that there are now critical shortages of this
18 equipment for health care workers. To curtail the spread of the COVID-19
19 pandemic in Washington State and to protect our health care workers as they
20 provide health care services, it is necessary to immediately prohibit all hospitals,
21 ambulatory surgery centers, and dental orthodontic, and endodontic offices in
22 Washington State from providing health care services, procedures and surgeries
23 that require personal protective equipment, which if delayed, are not anticipated
24 to cause harm to the patient within the next three months.

25 18. Proclamation 20-24 provides that one of the reasons it was issued was that "the
26 worldwide COVID-19 pandemic and its progression throughout Washington State continues to
threaten the life and health of our people as well as the economy of Washington State, and
remains a public disaster affecting life, health, property or the public peace."

COMPLAINT—CLASS ACTION - 4

KELLER ROHRBACK L.L.P.

1201 Third Avenue, Suite 3200
Seattle, WA 98101-3052
TELEPHONE: (206) 623-1900
FACSIMILE: (206) 623-3384

1 19. On information and belief, Proclamation 20-24 refers to property damage
2 throughout Washington State, including in Snohomish County where Plaintiff's business is
3 located.

4 20. On March 23, 2020, Mr. John Weisman, Secretary of Washington State's
5 Department of Health, issued a list of directives and orders regarding healthcare matters and
6 mandated that all healthcare practitioners, including dental, cease all elective and non-urgent
7 medical procedures and appointments as of the close of business on March 24, 2020, and
8 throughout the duration of the catastrophic health emergency.

9 21. On March 25, 2020, the Washington State Dental Association recommended that
10 all dental practices follow the mandates and orders of the Washington Department of Health and
11 postpone all non-emergency or non-urgent dental procedures throughout the duration of the
12 catastrophic health emergency.

13 22. On March 30, 2020, Governor Inslee issued Order Number 20-03-30-01 affecting
14 persons and residents within the State of Washington, which includes a "Stay-at-Home Order"
15 requiring all persons living in Washington to stay in their homes or places of residences except
16 under certain specified circumstances.

17 23. Governor Inslee's Proclamations and Orders related to COVID-19 have been
18 extended and modified from time to time.

19 24. Governors and civil authorities in other states have issued similar orders and
20 proclamations, for similar reasons.

21 25. Due to Governor Inslee's order, beginning on or about March 19, 2020, Plaintiff
22 was unable to use her property for its intended and insured purpose.

1 26. Plaintiff's property sustained direct physical loss and/or damages related to
2 COVID-19 and/or the proclamations and orders.

3 27. Plaintiff's property will continue to sustain direct physical loss or damage covered
4 by the Aspen policy or policies, including but not limited to business interruption, extra expense,
5 interruption by civil authority, and other expenses.
6

7 28. Plaintiff submitted a claim for coverage for its losses covered by the Aspen Policy
8 on or about March 25, 2020.

9 29. By letter dated June 8, 2020, Defendant denied Plaintiff's claim.

10 30. Upon information and belief, Aspen has denied and will deny coverage to other
11 similarly situated policyholders.
12

V. CLASS ACTION ALLEGATIONS

13 31. This matter is brought by Plaintiff on behalf of itself and those similarly situated,
14 under Federal Rules of Civil Procedure 23(b)(1), 23(b)(2), and 23(b)(3).
15

16 32. The Classes that Plaintiff seeks to represent are defined as:

17 A. ***Practice Income Breach of Contract Class:*** All persons and entities in the
18 United States issued an Aspen policy with Practice Income Coverage who suffered a
19 suspension of their practice at the covered premises related to COVID-19 and/or orders
20 issued by Governor Inslee, other Governors, and/or other civil authorities and whose
21 Practice Income claim has been denied by Aspen.
22

23 B. ***Practice Income Declaratory Relief Class:*** All persons and entities in the
24 United States issued an Aspen policy with Practice Income Coverage who suffered a
25 suspension of their practice at the covered premises related to COVID-19 and/or orders
26 issued by Governor Inslee, other Governors, and/or other civil authorities.

1 C. ***Extra Expense Breach of Contract Class:*** All persons and entities in the
2 United States issued an Aspen policy with Extra Expense Coverage who incurred
3 expenses while seeking to minimize the suspension of business at the covered premises in
4 connection with COVID-19 and/or orders issued by Governor Inslee, other Governors,
5 and/or other civil authorities and whose Extra Expense claim has been denied by Aspen.
6

7 D. ***Extra Expense Declaratory Relief Class:*** All persons and entities in the
8 United States issued an Aspen policy with Extra Expense Coverage who incurred
9 expenses while seeking to minimize the suspension of business at the covered premises in
10 connection with COVID-19 and/or orders issued by Governor Inslee, other Governors,
11 and/or other civil authorities.

12 E. ***Extended Practice Income Breach of Contract Class:*** All persons and
13 entities in the United States issued an Aspen policy with Extended Practice Income
14 Coverage who suffered a suspension of their practice at the covered premises related to
15 COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil
16 authorities and whose Extended Practice Income claim has been denied by Aspen.
17

18 F. ***Extended Practice Income Declaratory Relief Class:*** All persons and
19 entities in the United States issued an Aspen policy with Extended Practice Income
20 Coverage who suffered a suspension of their practice at the covered premises related to
21 COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil
22 authorities.

24 G. ***Civil Authority Breach of Contract Class:*** All persons and entities in the
25 United States issued an Aspen policy with Civil Authority Coverage who suffered a
26 suspension of their practice at the covered premises related to the impact of COVID-19

1 and/or orders issued by Governor Inslee, other Governors, and/or other civil authorities
2 and whose Civil Authority claim has been denied by Aspen.

3 **H. Civil Authority Declaratory Relief Class:** All persons and entities in the
4 United States issued an Aspen policy with Civil Authority Coverage who suffered a
5 suspension of their practice at the covered premises related to COVID-19 and/or orders
6 issued by Governor Inslee, other Governors, and/or other civil authorities.
7

8 33. Excluded from the Class are Defendant's officers, directors, and employees; the
9 judicial officers and associated court staff assigned to this case; and the immediate family
10 members of such officers and staff. Plaintiff Jagow reserves the right to amend the Class
11 definition based on information obtained in discovery.
12

13 34. This action may properly be maintained on behalf of the Class under the criteria
14 of Rule 23 of the Federal Rules of Civil Procedure.
15

16 35. **Numerosity:** The members of the Class are so numerous that joinder of all
17 members would be impractical. Plaintiff is informed and believes that the proposed Class has
18 hundreds of members. The precise number of class members can be ascertained through
19 discovery, which will include Defendant's records of policyholders.
20

21 36. **Commonality and Predominance:** Common questions of law and fact
22 predominate over any questions affecting only individual members of the Class. Common
23 questions include, but are not limited to, the following:
24

25 A. Whether the class members suffered covered losses based on common
26 policies issued to members of the Class;
27

28 B. Whether Aspen acted in a manner common to the Class by wrongfully and
29 uniformly denying claims for coverage relating to COVID-19 and/or orders issued by
30

1 Governor Inslee, other Governors, and/or other civil authorities on the same grounds
2 and/or otherwise in breach of the law of contracts;

3 C. Whether Practice Income Coverage in Aspen's policies of insurance
4 applies to a suspension of practice relating to COVID-19 and/or orders issued by
5 Governor Inslee, other Governors, and/or other civil authorities;

6 D. Whether Extra Expense Coverage in Aspen's policies of insurance applies
7 to efforts to minimize a loss relating to COVID-19 and/or orders issued by Governor
8 Inslee, other Governors, and/or other civil authorities;

9 E. Whether Extended Practice Income Coverage in Aspen's policies of
10 insurance applies to a suspension of practice relating to COVID-19 and/or orders issued
11 by Governor Inslee, other Governors, and/or civil authorities;

12 F. Whether Civil Authority Coverage in Aspen's policies of insurance
13 applies to a suspension of practice relating to COVID-19 and/or orders issued by
14 Governor Inslee, other Governors, and/or civil authorities;

15 G. Whether Aspen has breached its contracts of insurance through a blanket
16 denial of all claims based on business interruption, income loss or closures related to
17 COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil
18 authorities;

19 H. Whether, because of Defendant's conduct, Plaintiff and the class members
20 have suffered damages; and if so, the appropriate amount thereof; and

21 I. Whether, because of Defendant's conduct, Plaintiff and the class members
22 are entitled to equitable and declaratory relief, and if so, the nature of such relief.

1 37. **Typicality:** Plaintiff's claims are typical of the claims of the members of the
 2 class. Plaintiff and all the members of the class have been injured by the same wrongful practices
 3 of Defendant. Plaintiff's claims arise from the same practices and course of conduct that give rise
 4 to the claims of the members of the Class and are based on the same legal theories.

5 38. **Adequacy:** Plaintiff will fully and adequately assert and protect the interests of
 6 the class and has retained class counsel who are experienced and qualified in prosecuting class
 7 actions. Neither Plaintiff nor its attorneys have any interests contrary to or in conflict with the
 8 Class.

9 39. **Federal Rule of Civil Procedure 23(b)(1), the Risk of Inconsistent or Varying
 10 Adjudications and Impairment to Other Class Members' Interests:** Plaintiff seeks
 11 adjudication as to the interpretation, and resultant scope, of Defendant's policies, which are
 12 common to all members of the class. The prosecution of separate actions by individual members
 13 of the class would risk inconsistent or varying interpretations of those policy terms and create
 14 inconsistent standards of conduct for Defendant. The policy interpretations sought by Plaintiff
 15 could also impair the ability of absent class members to protect their interests.

16 40. **Federal Rule of Civil Procedure 23(b)(2), Declaratory and Injunctive Relief:**
 17 Defendant acted or refused to act on grounds generally applicable to Plaintiff and other members
 18 of the class making injunctive relief and declaratory relief appropriate on a classwide basis.

19 41. **Federal Rule of Civil Procedure 23(b)(3), Superiority:** A class action is
 20 superior to all other available methods of the fair and efficient adjudication of this lawsuit. While
 21 the aggregate damages sustained by the class are likely to be in the millions of dollars, the
 22 individual damages incurred by each class member may be too small to warrant the expense of
 23 individual suits. Individual litigation creates a risk of inconsistent and/or contradictory decisions
 24

and the court system would be unduly burdened by individual litigation of such cases. A class action would result in a unified adjudication, with the benefits of economies of scale and supervision by a single court.

VI. CAUSES OF ACTION

Count One—Declaratory Judgment

(Brought on behalf of the Practice Income Coverage Declaratory Relief Class, Extra Expense Declaratory Relief Class, Extended Practice Income Declaratory Relief Class, and Civil Authority Relief Class)

42. Previous paragraphs alleged are incorporated herein.

43. This is a cause of action for declaratory judgment pursuant to the Declaratory Judgment Act, codified at 28 U.S.C. § 2201.

44. Plaintiff Jagow brings this cause of action on behalf of the Practice Income Coverage Declaratory Relief Class, , Extra Expense Declaratory Relief Class, Extended Practice Income Declaratory Relief Class, and Civil Authority Declaratory Relief Class.

45. Plaintiff Jagow seeks a declaratory judgment declaring that Plaintiff Jagow's and class members' losses and expenses resulting from the interruption of their business are covered by the Policy.

46. Plaintiff Jagow seeks a declaratory judgment declaring that Aspen is responsible for timely and fully paying all such claims.

Count Two—Breach of Contract

(Brought on behalf of the Practice Income Coverage Breach of Contract Class, Extra Expense Breach of Contract Class, Extended Practice Income Breach of Contract Class, , and Civil Authority Breach of Contract Class)

47. Previous paragraphs alleged are incorporated herein.

48. Plaintiff Jagow brings this cause of action on behalf of the Practice Income Coverage Breach of Contract Class, Extra Expense Breach of Contract Class, Extended Practice Income Breach of Contract Class, and Civil Authority Breach of Contract Class.

49. The Policy is a contract under which Plaintiff Jagow and the class paid premiums to Aspen in exchange for Aspen's promise to pay Plaintiff Jagow and the class for all claims covered by the Policy.

50. Plaintiff Jagow has paid its insurance premiums.

51. Plaintiff Jagow has been denied coverage for its losses covered by the Aspen policy.

52. Upon information and belief, Aspen has denied, and will continue to deny coverage for other similarly situated policyholders.

53. Denying coverage for the claim is a breach of the insurance contract.

54. Plaintiff Jagow is harmed by the breach of the insurance contract by Aspen.

1. REQUEST FOR RELIEF

1. Class action status under Fed. R. Civ. P. 23.

2. A declaratory judgment that the policy or policies cover the plaintiff's losses and expenses resulting from the interruption of the Plaintiff's business by COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other authorities.

3. A declaratory judgment that the defendant is responsible for timely and fully paying all such losses.

4. Damages.

5. Pre-judgment interest at the highest allowable rate.

6. Reasonable attorney fees and costs.

1 By: s/ Alison Chase
2 Alison Chase, *pro hac vice forthcoming*
3 801 Garden Street, Suite 301
4 Santa Barbara, CA 93101
5 Telephone: (805) 456-1496
6 Fax: (805) 456-1497
7 Email: achase@kellerrohrback.com

8 *Attorneys for Plaintiff*
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

4824-3181-6134, v. 1